

REMARKS

Applicants appreciate the courtesies extended to their representative, Allan Fanucci, and co-inventor Arnold Finestone, during a telephone interview with Examiners and Walter Aughenbaugh and Sandy Nolan on September 11, 2003. The comments appearing herein are essentially the same as those that were presented and discussed during the interview.

Claim 12 was rejected under 35 USC 112, second paragraph, as being indefinite as to the use of the term "enhanced". In response, applicants have amended that claim 12 to recite that a dilatable container product made from the laminate sheeting of the invention has enhanced tear and burst strength compared to dilatable containers made from plastic coated cellulosic papers. Although not identical to the proposed claim amendment language that was discussed during the interview, the underlined language is explicitly supported in the specification at page 3, lines 19-23 and has been adopted for that reason. Accordingly, this rejection has been overcome and should be withdrawn.

Claims 12-25 have been rejected under 35 USC section 103(a) as being unpatentable over the combination of the Redmond and Finestone et al. patents of record for the reasons set forth on pages 4-9 of the action. Applicants traverse this rejection.

As previously explained, Redmond discloses certain materials for forming packages for flowable substances. These packages are formed by superimposing a sheet of a relatively flexible material over a sheet, web or card of a relatively stiff but flexible material and placing the flowable substance between the sheets. To enable the flowable material to be removed from the package, a cut is placed in the stiff material, so that when bending the stiff material it will rupture to allow the flowable substance to exit the package. After the stiff material is cut, Redmond teaches that it may be coated or covered with a sealant (col. 2 line 21), such as a plastic, a wax or a foil, which is applied as a liquid to form a cover over the cut. This suggests that certain materials may not need to be provided with a sealant, as that is provided simply to form a seal to prevent wicking or seepage of the flowable substance through the cut. In addition, Redmond teaches that the sealant "should be of a tensile strength which, when the stiff material is bent, will rupture at or closely adjacent to such cut" (Col. 2, line 21-34). Redmond further explains in the paragraph bridging columns 4 and 5 that the sealant "should be sufficiently weak, when the package is bent, so as to avoid interference with the rupture of the base 70 when the cut through or partially cut through base is bent or folded."

In order to properly function, Redmond's sealant cannot be of high strength. Col. 2, lines 45-61 disclose how the package is ruptured to dispense the product therein. The

package is folded so that the cut, relatively stiff material ruptures the sealant at the cut to allow the package contents to be dispensed by squeezing or other applications of force. If the sealant were of high strength, it could not be punctured by the stiff material, so that the contents of the package could not be dispensed. This is why Redmond mentions that the sealant is a coating (i.e., wax), applied as a liquid, or as a covering of a sufficiently weak material (i.e., a thin plastic or foil) that can be punctured by the stiff material.

Redmond also discloses that the stiff material can be cardboard, fiberboard, paperboard, or a plastic (col. 4, lines 46 to 52), with a weak plastic such as polystyrene specifically mentioned (col. 2, line 35). As noted, this material, which is not sufficiently hard or rigid, is cut to facilitate fracture of the material and puncturing of the sealant. The material cannot be too strong or highly rigid or else it will be difficult to break even with the cut lines. This in turn requires that the sealant be weak so that it can be punctured when the material fractures, rather than be fractured by the material itself.

Accordingly, Redmond does not disclose or teach the features of the presently claimed invention. The applicants' utilize two reinforcing films of synthetic oriented plastic material that are adhesively cold-laminated by a water-based adhesive to an inner paper sheet. These materials cannot be used as sealants in Redmond's package. In fact, Redmond teaches away from the use of thin sheets or laminates in col. 1, lines 46-61, where he describes the problems of a container formed of such materials. Skilled artisans would realize that such sheets are preferably made of oriented plastics for strength. Furthermore, the skilled artisans would also understand that Redmond specifically teaches against the use of plastic and foil laminates for the same reason. In direct contrast to Redmond's teachings, the applicants utilize and actually require a high strength, oriented plastic material in their laminates. The oriented plastic films provide burst strength and tear resistance to the laminate sheeting and to container products made from the laminate sheeting.

During the interview, Dr. Finestone explained that the use of a high strength oriented plastic film in Redmond's package would be contrary to the package structure that Redmond is trying to achieve. In order to have an easy opening package, Redmond's sealant 6 must break when the stiff material 14 is bent and fractured along the cut lines, but an oriented film would have sufficient strength and flexibility to conform to the shape of the bent stiff material without fracturing or breaking, so that the contents of the package could not be dispensed. For these reasons, a skilled artisan reading Redmond would be taught to use a wax or plastic coating or a weak film rather than an oriented plastic material to seal the cut

lines. Thus, as Redmond does not disclose the presently claimed oriented plastic films and in fact teaches against it, Redmond alone cannot be used to reject the present claims.

The Finestone et al. patent is apparently cited to remedy the deficiencies of the Redmond patent. The Finestone et al. patent is owned by the same entity as the present application, but that patent is directed to a plastic-paper or paper-plastic-paper laminate sheeting that is useful for envelopes or other dilatable container products. The combination of Redmond with Finestone et al. is not appropriate for the reasons discussed above, since Redmond's package would not very difficult to open if oriented plastic films or one of the Finestone et al. laminates were used as the sealant. In addition, the Finestone et al. laminates are made of paper-plastic or paper-plastic-paper, so that one or both outer surfaces of the laminate are made of paper. This would not provide a moisture resistant surface for the Redmond package, particularly since the stiff material is scored. Furthermore, if one of the Finestone et al. laminates was substituted for the sealant and stiff material of Redmond, the package would not be openable as taught by Redmond. First of all, one of the layers of the Finestone et al. laminates is paper, i.e., a flexible rather than stiff material as taught by Redmond. When laminated to a plastic film, a flexible material such as paper cannot be scored and then bent to break open the laminate. Furthermore, as noted above, even if there was some way of stiffening the paper, it would not be able to break the oriented plastic film that is used in the Finestone et al. laminates.


Accordingly, there is no relation between the Redmond and Finestone et al. patents that would lead one of ordinary skill in the art to the presently claimed invention. In addition, the present invention defines a plastic-paper-plastic sheeting that is useful for making containers for pasty fluids such as mustard or ketchup, while Finestone et al. does not mention such a utility. Furthermore, if the Finestone et al. oriented plastic films were substituted for the sealants used by Redmond, the functionality of Redmond's invention would be impaired, since the use of a high strength film would make Redmond's package much more difficult to open. As noted above, Redmond teaches against the use of such films and describes them as being problematic in the prior art. In view of these differences, the Redmond and Finestone et al. patents are incompatible, and it is respectfully submitted that the present rejection is not tenable.

Finally, a Rule 132 Declaration of Arnold Finestone Ph.D. is enclosed to further support the patentability of the present claims. For all these reasons, the rejection has been overcome and should be withdrawn.

Applicants submit that the entire application is now in condition of allowance, early notice of which would be appreciated. Should the Examiner not agree with the Applicants' position, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the application.

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Respectfully submitted,


Allan A. Fanucci (Reg. No. 30,256)

WINSTON & STRAWN
Customer Number 28765
(212) 294-3311